IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 18TH JANUARY 2007 / 28TH PAUSHA 1928

Crl.MC.No. 155 of 2007()

AGAINST THE ORDER IN CP 99/2006 IN
ST.1642/2004 of JUDL.MAGISTRATE OF FIRST CLASS, PARAVOOR
CRIME NO.202/2004 OF CHATHANNOOR POLICE STATION

.....

PETITIONER: ACCUSED:

---

1. SAJI,
   BEENA MANDIRAM, MAMPALLIKUNNAM CHERRY,
   MEENAD VILLAGE, KOLLAM.

2. RAJU,
   BEENA MANDIRAM, MAMPALLIKUNNAM CHERRY,
   MEENAD VILLAGE, KOLLAM.

3. BIJU,
   BEENA MANDIRAM, MAMPALLIKUKNNAM CHERRY,
   MEENAD VILLAGE, KOLLAM.

BY ADV. SRI.B.SURESH KUMAR

RESPONDENTS: STATE:

THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM REPRESENTING THE
DEPUTY SUPERINTENDENT OF POLICE, KOLLAM.

BY PUBLIC PROSECUTOR SMT.LATHA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 18/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.155 of 2007

Dated this the 18th day of January, 2007

ORDER

The petitioners are accused facing indictment in a prosecution, inter alia, under Section 3(1)(x) of the Scheduled Caste/Scheduled Tribe (Prevention of Attrocities) Act. Initially investigation was conducted and final report was filed and in that final report, no allegation was raised of the petitioners having committed the offence punishable under Section 3(1)(x) of the Scheduled Caste/Scheduled Tribe (Prevention of Attrocities) Act. It is submitted that though cognizance was taken of the other offences, the petitioners had not received the summons and had not appeared before the learned Magistrate. Long later, a petition under Section 173(8) Cr.P.C was filed before the learned Magistrate, a copy of which is produced as Annexure-A4, seeking permission to conduct further investigation under Section 173(8) Cr.P.C and to file a report. Later, further report was filed incorporating the allegation under Section 3(1)(x) of the Scheduled Caste/Scheduled Tribe (Prevention of Attrocities) Act also. The learned counsel for the petitioners submits at the Bar that the learned Magistrate has now issued non bailable warrants to procure the arrest of the petitioners consequent to the alteration of charge and the conversion of the C.C into a C.P.

2. The learned counsel for the petitioners submits that the further investigation and the inclusion of the allegation under Section 3(1)(x) of the Scheduled Caste/Scheduled Tribe (Prevention of Attrocities) Act are unjustified and reveal only the anxiety of the defacto complainant in collusion with the police to vex and harass the petitioners. In these circumstances, it is prayed that the final report submitted may be set aside and there may be a direction to release the petitioners on bail when they appear and apply for bail before the learned Magistrate.

3. I have been taken through the entire materials available in this Crl.M.C. Having gone through all the relevant materials, I find that it would presumptuous for this Court at this stage exercising jurisdiction under Section 482 Cr.P.C to jump to a conclusion that the allegations against the petitioners are without any basis and that consequently further report incorporating the allegation under Section 3(1)(x) of the Scheduled Caste/Scheduled Tribe (Prevention of Attrocities) Act deserves to be quashed. The main prayer in this Crl.M.C that the further report must be quashed under Section 482 Cr.P.C cannot in these circumstances be allowed.

4. However, the learned counsel for the petitioners submits that the petitioners will be put to great suffering and misery if they were not enlarged on bail by the learned Magistrate. The direction under Section 438 Cr.P.C does not appear to be possible in the light of

Section 18 of the Scheduled Caste/Scheduled Tribe (Prevention of Attrocities) Act. But in the facts and circumstances of this case where the investigation is already completed and the final report is filed, I find no reason why the learned Magistrate should not release the petitioners on bail if they appear and apply for bail. It is for the petitioners to appear before the learned Magistrate and seek bail. This Court had already considered the question in **Ali v. State of Kerala** [2000(2) K.L.T 280], **Shanu v. State of Kerala** [2000(3) K.L.T 452, **Krishnakumar v. State of Kerala** [2005(1) K.L.D (Crl) 42 and **P.P.Kader v. State of Kerala** [2005 (1) K.L.D (Crl) 250] and held that bail can be granted to the petitioners in a prosecution under Section 3 of the Scheduled Caste/Scheduled Tribe (Prevention of Attrocities) Act depending on the facts notwithstanding the fact that it is triable by a Court of Sessions. This, it is observed, will certainly be an eminently fit case where the petitioners are entitled to be released on bail notwithstanding the fact that the offence is triable by a Court of Sessions.

7. This Crl.M.C is, in these circumstances, dismissed but subject to the above observations.

8. Handover a copy of this order to the learned counsel for the petitioners forthwith.

(R.BASANT, JUDGE)

rtr/-